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June 21, 2010

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The Capital, PL-01
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Re: Gulf Coast State Attorneys General Correspondence of June 18, 2010

Dear Mr. Kent:

Please accept this correspondence as the reply of Triton Asset Leasing GmbH, Transocean Holdings LLC, Transocean Offshore Deepwater Drilling, Inc. and Transocean Deepwater, Inc. (collectively, "Transocean") to the referenced correspondence of the Attorneys General for the States of Alabama, Louisiana, Florida, Mississippi, and Texas.

The June 18, 2010 correspondence states the position that 33 U.S.C. § 2718(a) "encompasses all state law claims, including state common-law claims, and that any such claims would not be subject to the court's injunction" of June 14, 2010. The

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June 18, 2010 correspondence requests written clarification from Transocean regarding Transocean's position on the applicability of the Limitation of Liability Act to state common-law causes of action.

Transocean does not agree that 33 U.S.C. § 2718(a) encompasses all state law claims, statutory and common-law, or that all state common-law claims are not subject to the court's injunction. It is Transocean's position that whether a particular state law claim, common-law or otherwise, falls within the scope of 23 U.S.C. § 2718(a) can only be determined on a case-by-case basis, depending upon the merits of each claim and the state statutory or common-law at issue. Transocean therefore cannot agree to the Gulf Coast State Attorneys General's blanket statement that all state law claims are unaffected by Judge Ellison's Amended Monition Order entered on June 14, 2010.

You have cited the case of *In re: Jahre Spray II K/S*, 1997 A.M.C. 845 (D.N.J. 1976) in support of the Gulf Coast State Attorneys General's contentions. Transocean does not agree that this cited decision supports the blanket conclusion reached by the Gulf Coast State Attorneys General. In this regard, we enclose a copy of the decision of *Van Schaeffer v. Tsakos Shipping & Trading, S.A.*, 2006 WL 1192939 (E.D. Pa. 2006), in which the court concluded that certain state common-law claims remain subject to the Limitation of Liability Act.

Your correspondence of June 18, 2010 also refers to "other cases" which you state support your position. So that we may have the benefit of your complete reasoning, we would request that you provide us with these additional cases which you contend support the Gulf Coast State Attorneys General's position.

Transocean will, of course, be willing to work with each of the various Attorneys General, and other private counsel, as circumstances arise to attempt to reach an agreement on a case-by-case basis as to which state common-law claims fall within

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the Court's injunction. Ultimately, if we are not able to reach an agreement, any dispute can be presented to Judge Ellison for resolution.

Very truly yours,

PREIS & ROY

By: 

Frank A. Piccolo

**ROYSTON, RAYZOR, VICKERY &
WILLIAMS**

By: 

John M. Elsley

Attorneys for Triton Asset Leasing GmbH,
Transocean Holdings LLC, Transocean
Offshore Deepwater Drilling, Inc. and
Transocean Deepwater, Inc.

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Only the Westlaw citation is currently available.

United States District Court,
E.D. Pennsylvania.
VAN SCHAEFFER, et al.

v.

TSAKOS SHIPPING AND TRADING, S.A. and
Frescati Shipping Company, Ltd.
Civil Action No. 05-4486.

May 2, 2006.

Daniel C. Levin, Levin, Fishbein, Sedran & Berman, Michael S. Katz, Slade H. McLaughlin, The Beasley Firm, Philadelphia, PA, for Plaintiff.

John J. Levy, Montgomery McCracken Walker & Rhoads LLP, Cherry Hill, NJ, for Defendant.

MEMORANDUM AND ORDER

FULLAM, Sr. J.

*1 On November 26, 2004, the tank vessel ATHOS I struck a submerged nine-ton piece of metal and spilled crude oil into the Delaware River. Plaintiffs are property owners along the river on the New Jersey side. The United States Coast Guard determined that the Defendants in this action were responsible for the spill under the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.* ("OPA 90"). Defendants earlier filed in this Court Civil Action No. 05-305, seeking exoneration from or limitation of liability (the "Limitation Action").^{FN1}

FN1. Plaintiffs filed suit in New Jersey state court, Defendants removed it to New Jersey federal court, and the parties agreed to transfer the action to this Court as related to the Limitation Action.

Defendants have moved to dismiss Count II of Plaintiffs' Complaint, which alleges strict liability

under New Jersey's Spill and Compensation and Control Act (the "Spill Act"), and "transfer" the other counts to the Limitation Action. They also contend that Plaintiffs cannot proceed as a class. Plaintiffs seek leave to file a second amended complaint to add a declaratory judgment count. I will dismiss Count II without prejudice to Plaintiffs' ability to submit claims to the New Jersey Spill Fund or the National Pollution Funds Center and consolidate the remaining counts with the Limitation Action. I will deny Plaintiffs' motion to amend.

Plaintiffs do not allege that they have incurred any costs in connection with the oil spill, and they acknowledge that they have not complied with the requirements of the New Jersey Spill Act, such as written approval of a remediation plan from the New Jersey Department of Environmental Protection. *See* N.J.S.A. 58:10-23.11b, 58:10-23.11f(a)(2). Therefore, Count II must be dismissed.

Plaintiffs seek to amend the Amended Complaint to assert a claim for a declaratory judgment that Defendants must indemnify Plaintiffs for any future cleanup and remediation costs. This amendment would be futile; without an allegation of liability for present costs, there is no justiciable controversy.

The remaining state common-law claims must be litigated as part of the Limitation Action. The Limitation Act, 46 U.S.C. § 181, *et seq.*, permits a vessel owner to compel all suits to be filed in a single action limited to the value of the vessel and its freight. OPA 90, however, excludes certain claims from the requirements of the Limitation Act, and permits states to impose additional liability. *See Bouchard Trans. Co. v. Updegraff*, 147 F.3d 1344, 1347, 1352 (11th Cir.1998). General maritime and admiralty claims remain subject to the Limitation Act. *See Metlife Capital Corp. v. M/V Emily S.*, 132 F.3d 818, 822-23 (1st Cir.1997).

The amended complaint seeks punitive damages and alleges damages for loss of enjoyment of the

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property, decline in property values, and inconvenience. Because the Amended Complaint does not allege that the named plaintiffs have incurred removal and clean up costs or that any of their property has been destroyed, and given that they have not alleged a cognizable claim under the New Jersey Spill Act, I conclude that in these circumstances it would be a stretch to characterize claims for nuisance as arising under New Jersey's statutory scheme to impose additional liability upon oil polluters. Therefore, the claims will be consolidated as part of the Limitation Action.

*2 Defendants also are correct that Plaintiffs' claims cannot be pursued as a class action. See *Lloyd's Leasing Ltd. v. Bates*, 902 F.2d 368 (5th Cir.1990).

An order follows.

ORDER

AND NOW, this 2nd day of May, 2006, for the reasons stated in the accompanying memorandum,

IT IS hereby ORDERED that:

1. Defendants' Motion to Dismiss Count II of the Amended Complaint is GRANTED. Count II is dismissed without prejudice to Plaintiffs' ability to submit claims to the New Jersey Spill Fund or the National Pollution Funds Center.
2. Civil Action No. 05-4486 is hereby CONSOLIDATED with Civil Action No. 05-305 for all purposes. All pleadings are to be filed under Civil Action No. 05-305, and the Clerk is directed to mark Civil Action No. 05-4486 CLOSED for statistical purposes.
3. The class action allegations in the Amended Complaint are STRICKEN.
4. Plaintiffs' Motion for Leave to File a Second Amended Complaint is DENIED.

E.D.Pa.,2006.

Van Schaeffer v. Tsakos Shipping and Trading, S.A.

Not Reported in F.Supp.2d, 2006 WL 1192939 (E.D.Pa.)

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